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May 4, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 19, 2005

Case Number: TSO-0283

This Decision concerns the eligibility of XXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." [1] The individual's employer, a Department of Energy (DOE) contractor, requested a clearance for the individual. For the reasons set forth below, I conclude that the individual should not be granted access authorization at this time.

I. BACKGROUND

In response to the employer's request for a clearance, the local DOE security office conducted an investigation of the individual. As a part of this investigation, the individual completed a Questionnaire for National Security Positions (QNSP) in 2002 and was interviewed by a personnel security specialist in 2004. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing the information generated by its investigation, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. They informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

[1] An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced 17 exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual submitted one exhibit and presented the testimony of four witnesses, in addition to himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Under paragraph (f), the DOE alleges that the individual "has deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for National Security Positions, . . . a personnel security interview [or] written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization." In support of this allegation, the Letter states that on his QNSP, the individual indicated that he only had two financial delinquencies totaling $531 of debt. During his PSI he reaffirmed this until he was confronted with information in his credit report indicating that he had eight delinquent accounts and five charge-off accounts totaling $45,595. He then acknowledged that he knew about some of the delinquent accounts, but did not list them on his QNSP because he did not think of them as debt and they were not substantial.

The Letter further indicates that on his QNSP, the individual certifies that he has had four arrests for Driving While Intoxicated (DWI), and that he confirmed this during his PSI. However, the Letter states, an OPM investigation indicates that there were two additional DWI arrests in 1986 and 1987 respectively, and during his psychiatric evaluation, he informed the DOE psychiatrist that he had been arrested six times for DWI.

Paragraph (j) defines as derogatory information indicating that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for this paragraph, the Letter cites the DOE psychiatrist's evaluation, in which he concludes that the individual suffers from Alcohol Dependence, with inadequate evidence of reformation or rehabilitation. In the Letter, the DOE further alleges that the individual has been arrested for DWI seven times, in February 1987, June 1986, on March 16 and March 5, 1984, May 1983, February 1983 and October 1982.

Under paragraph (l), information is derogatory if it indicates that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the national security." In support of this paragraph, the Letter states that the individual "has established a

progressive pattern of financial irresponsibility and has demonstrated an unwillingness or inability to satisfy his debts," as evidenced by his filing for bankruptcy in November 1994 and his accrual of $45,595 in delinquent debt.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraphs (f), (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material. Further, the individual has failed to adequately address the security concerns raised by that information.

A. PARAGRAPH (F)

At the hearing, the individual did not deny the allegation set forth in the Notification Letter that on his 2002 QNSP, he failed to list all of the debt on which he had been delinquent in making payments over the preceding seven years. Instead, he attempted to explain the omissions by stating that he did

not consider delinquencies that resulted in the repossession of certain assets to be debt, Hearing Transcript (Tr.) at 53-54, and by claiming that he thought that his delinquent accounts (other than the two mentioned on his QNSP) were for amounts that were too small to mention on the Questionnaire, and not for any total remotely approaching $45,000. Tr. at 54. He further testified that he was not aware of the full extent of his delinquent debt because his former wife handled the family finances. Tr. at 51.

Even if this final contention is true, these explanations do not adequately address the DOE's security concerns under paragraph (f). Part (a) of question 28 on the QNSP asks "In the last 7 years, have you been over 180 days delinquent on any debt(s)? Part (b) asks "Are you currently over 90 days delinquent on any debt(s)?" Therefore, even if the individual sincerely believed that a portion of his delinquent debt had been extinguished by repossessions, the fact remains that prior to those events, delinquencies existed with regard to those accounts. It is past delinquencies such as this that are the subject of part (a). Moreover, neither part (a) nor part (b) sets a minimum amount, below which delinquent debt need not be reported. Consequently, the individual was required to report all delinquencies of over 180 days within the last seven years, and all current delinquencies of over 90 days, regardless of the amounts involved. The record indicates that he intentionally omitted significant information concerning his delinquent debt from his QNSP.[2]

B. PARAGRAPH (J)

The individual has readily admitted that he had a drinking problem as a teenager and as a young adult. DOE Ex. 4 at 2; DOE Ex. 6 at 2, Tr. at 84. However, he contends that he is now rehabilitated, and should therefore be granted access authorization. As support for this position, the individual produced testimony at the hearing tending to show that he is adequately satisfying his professional and familial obligations and that he has completely abstained from alcohol use since December 2004.

[2] However, I conclude that the individual did not deliberately misrepresent, falsify or omit significant information on his QNSP, or during the PSI or psychiatric evaluation about the number of his DWI arrests, as is alleged in the Notification Letter. As previously set forth, the individual indicated on his QNSP that he had four DWI arrests, and in the Notification Letter, the DOE alleges that he had seven DWI arrests. Nevertheless, based on communications with the municipality in which the individual lived at the time, it appears that three of those arrests, the ones that occurred in 1986, 1987, and in May 1983, were not for separate instances of driving while intoxicated, but were instead for allegedly failing to fulfill legal requirements imposed as a result of earlier DWIs. *See* e-mails dated March 28, 2006 and January 19, 2006 from Paul Jones, DOE counsel, to Robert Palmer, Hearing Officer, and to the individual.

I note that in his report, the DOE psychiatrist observed that the individual had admitted to six DWI arrests. DOE Ex. 6 at 2. However, the DOE psychiatrist also stated that, according to the individual, four of the arrests happened within a six month period. *Id.* at 3. This is not consistent with the information set forth in the Notification Letter, in that no four of the arrests alleged therein occurred within such a period. Given this discrepancy, and given the individual's consistent statements that he has had only four DWIs, I find there to be insufficient evidence of falsification on this issue.

During his psychiatric evaluation and his PSI, the individual described his early alcohol consumption. He started drinking at 13, when he would have "one or two" glasses of beer an average of two times a week while working at a local pizza parlor. PSI at 53. During that time, his mother, who at the time was an active alcoholic, would purchase vodka for the individual to drink at home, believing this to be preferable to the individual drinking in other places. *Id.*, Tr. at 42. The individual and his friends would then make and consume "screwdrivers." In addition to the beer consumed at work, the individual would have "maybe three" of these mixed vodka drinks on weekends. PSI at 56.

When the individual began high school in 1976, his drinking escalated. He would drink beer with his friends on approximately a weekly basis, sometimes skipping school to do so. PSI at 58, 60. On these occasions, he would consume "six or eight" beers, and sometimes an undisclosed amount of wine. PSI at 59-61. His consumption continued to increase until it reached a point where he ". . . was drinking [beer] every single day. And it was no less than a 12-pack. No, if I drank a six-pack, it would be like I didn't even feel it." PSI at 61.

This pattern of consumption continued until approximately 1985, when the individual voluntarily entered into an alcohol treatment program at a local facility. This program consisted of 30 days of in-patient treatment followed by weekly outpatient therapy sessions over a period of about three months. DOE Ex. 6 at 4. Following completion of this program, the individual was successful in completely abstaining from alcohol use for approximately 13 years. PSI at 63.

In 1998, the individual resumed consuming alcohol. During the PSI, he indicated that this was due to the urging of his ex-wife, who felt that the individual's abstinence at parties made him look like an "outsider" or a "prude." PSI at 18, 65. At the hearing, the individual said that he began drinking again because "I just thought, 'it's been 12 years.'" Tr. at 84. At first, he would drink "a couple of beers" once a month or once every two months. PSI at 65. Eventually, the individual began drinking approximately twice a week, consuming no more than three beers on each occasion. PSI at 20-21. In December 2004, after his PSI, the individual stopped drinking when he realized that his alcohol consumption was raising questions regarding his eligibility for a security clearance. Tr. at 77-78; 83. He indicated that he had his last drink on December 10, 2004. *Id.*

I found the individual to be open and forthcoming concerning his alcohol use. His testimony concerning the date of his last drink and his good performance as a parent and as an employee was supported by the testimony of his supervisor, his two sons and his mother. Tr. at 9, 13, 21, 24, 29, 36, 40. Furthermore, the results of laboratory tests administered at the request of the DOE psychiatrist do not contradict the individual's claim concerning the date of his last drink. I also found to be of substantial mitigating value the fact that, prior to December 2004, the individual had apparently been drinking since 1998 with no further legal problems and no significant impact on his ability to adequately function as an employee and as a father.

However, two factors lead me to conclude that there are still unresolved security concerns regarding the individual's alcohol use disorder. The primary factor is the largely unrebutted testimony of the DOE psychiatrist. After his examination of the individual in April 2005, the DOE psychiatrist diagnosed him as suffering from Alcohol Dependence with physiological dependence, in early full remission. He opined that, in order to demonstrate adequate evidence of rehabilitation from this

condition, the individual would have to show abstinence for one year, with both alcohol counseling and individual psychotherapy during that time. DOE Ex. 6 at 8-9. At the hearing, the DOE psychiatrist observed that, although the individual had "probably" abstained from alcohol use for one year, he had not received any alcohol counseling or individual psychotherapy during that period. Tr. at 105. After hearing all of the testimony offered by the individual, the DOE psychiatrist was still of the opinion that the individual was not exhibiting adequate evidence of rehabilitation from Alcohol Dependence. Tr. at 105-106.

Several salient aspects of the DOE psychiatrist's testimony support this conclusion. First, he pointed out that the individual's diagnosis is Alcohol Dependence with physiological dependence, and not the less-severe diagnosis of Alcohol Abuse. He observed that alcohol abusers might eventually be able to return to a controlled pattern of drinking without significant problems. However, when "you get into the area though of someone who at some point in time had fallen into Alcohol Dependence . . . and became physically dependent on it, most people knowledgeable in the field would say that group is kind of asking for it to try to start drinking in moderation, that's it's a very high risk that it's going to cause problems." Tr. at 97. Furthermore, he indicated that although the individual had apparently been successful in drinking on a limited basis between 1998 and 2004, this did not mean that he was no longer in danger of suffering a relapse. He explained that "once somebody has been in Alcohol Dependence, [quitting] is difficult. . . . in particular when stress hits. He's got two kids, when they hit teenaged years and the stresses there, or if he gets remarried and his wife starts giving him problems, or he gets lonely if he doesn't get remarried, all kind of stresses . . . could come up" and make it very difficult to remain sober. Tr. at 101. Finally, the DOE psychiatrist stated that the individual exhibited certain traits associated with Borderline Personality Disorder. [3] Although the individual did not meet the DSM-IV-TR requirements for a full-blown diagnosis of the Disorder, the DOE psychiatrist found that the traits of mood instability and impulsiveness that he did demonstrate made it particularly inadvisable for the individual to attempt to drink in moderation. Tr. at 111-113. It was because of these Borderline Personality traits that the DOE psychiatrist recommended psychiatric therapy in his written report, in addition to alcohol counseling.

In making their decisions, hearing officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See,, e.g., Personnel Security Hearing,* Case No. VSO-0146, August 31, 1997; *Personnel Security Hearing,* Case No. VSO-0027, August 14, 1995. In this case, I find that the DOE psychiatrist's conclusions are adequately supported by the record.

The second factor that leads me to conclude that there are unresolved security concerns is the individual's expressed attitude toward his alcohol use disorder and his ability to consume alcohol in moderation. At the hearing, when asked if he thought that he currently had "a problem with alcohol," the individual replied that he did not. Tr. at 85. This answer, when considered by itself, could merely reflect the individual's belief that because he has not consumed alcohol since December 2004, his disorder is currently under control. However, when considered in conjunction with his later statements that he believes that he can safely drink in moderation and that he stopped

[3] Borderline Personality Disorder is defined in the DSM-IV-TR as "A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning in early adulthood and present in a variety of contexts . . . ."

only because he knew that his consumption would be an issue in determining his clearance eligibility, Tr. at 81-83, I believe that it demonstrates a dangerous underestimation of the seriousness of his disorder. Accordingly, I am concerned that when this proceeding has ended, the individual will again attempt to drink in moderation. Like the DOE psychiatrist, I believe that the risk of a serious relapse under such circumstances is unacceptably high. I found credible the individual's statement at the hearing that his responsibility toward his children provides a strong incentive to remain sober. Tr. at 86. Nevertheless, I am left to wonder what will happen once his sons mature and leave the household, and that incentive is no longer operative. For these reasons, I conclude that unresolved security concerns remain under paragraph (j).

C. PARAGRAPH (L)

At the hearing, the individual attempted to address the DOE's concerns about financial irresponsibility through the testimony of his supervisor and himself, and through the submission of his most recent credit reports. The individual stated that the delinquent debt in excess of $45,000 that he and his ex-wife had incurred as of December 2004 had been reduced to approximately $12,000. Tr. at 6. This was corroborated by the testimony of the individual's supervisor, who added that the individual had improved his credit scores enough to qualify to buy a house, and by the credit reports. Tr. at 10-11; Individual's Exhibit 1.

Although the individual has made significant progress in improving his financial condition, I conclude that he has not adequately mitigated the DOE's concerns under paragraph (l). As an initial matter, the individual is admittedly still in a substantial amount of debt. However, even if he had been able to pay off all of his creditors as of the date of the hearing, it would still not be enough, by itself, to warrant a finding that the DOE's concerns under this paragraph had been adequately addressed. I believe that once a pattern of financial irresponsibility has been established, the individual must demonstrate a new pattern of financial responsibility that is sufficient to indicate that a return to the irresponsible pattern is unlikely. *See, e.g., Personnel Security Hearing*, Case No. VSO-0108, December 3, 1998. Therefore, the doubts that are raised by past financial difficulties are not necessarily resolved when an individual is able to pay off all of his or her debts. *See, e.g., Personnel Security Hearing*, Case No. VSO-0132, June 10, 1997.

In this case, the individual declared bankruptcy in 1994, and by December 2004 had accumulated in excess of $45,000 in delinquent debt. Even if the individual's assertion that he was unaware of the magnitude of his debt because his ex-wife handled the finances is true, in December 2004 the individual still was not totally cognizant of the state of his financial obligations, even though he had been divorced for six months. PSI at 131, Tr. at 12. The individual made substantial progress toward putting his financial affairs in order during the months leading up to the hearing. However, I find that this does not sufficiently mitigate the concerns raised by years of financial irresponsibility, especially in the absence of any indication that the individual has received financial counseling or has established a budget. The concerns raised by the DOE under paragraph (l) remain unresolved.

V. CONCLUSION

Based on the factors discussed above, I find that the individual has failed to adequately address the security concerns set forth in the Notification Letter. Accordingly, I conclude that he has not demonstrated that granting him a clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted access authorization at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: May 4, 2006